133-296

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~1888.~~ 952

ADAM G. ADAMS, TRUSTEE, PLAINTIFF IN ERROR,

vs.

THOMAS J. CRITTENDEN AND ALFRED BOWEN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED OCTOBER 15, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1336.

ADAM G. ADAMS, TRUSTEE, PLAINTIFF IN ERROR,

vs.

THOMAS J. CRITTENDEN AND ALFRED BOWEN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 26, 1888.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 26, 1888.

1 THE UNITED STATES OF AMERICA,
Northern District of Alabama, Northern Division:

Pleas had at a regular term of the circuit court of the United States of America for the northern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Huntsville, in said district, on the first Monday of April (it being the second day thereof), in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and twelfth year.

Present: The Hon. John Bruce, judge of the district courts of the United States for the northern and middle districts of Alabama, presiding; Arthur H. Keller, marshal, by his deputy, George P. Turner, and A. W. McCullough, clerk.

2 *Complaint.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Northern Division of the northern District of Alabama.

ADAM G. ADAMS, Trustee, who is a Resident Citizen of the State of Tennessee, Plaintiff,

vs.

THOMAS J. CRITTENDEN and ALFRED BOWEN, who are Citizens of and who Reside in the Northern Division of the Northern District of Alabama, Defendants.

The plaintiff sues to recover the following-described tracts or parcels of land situated in the county of Lauderdale, State of Alabama, and within said northern division of said northern district, to wit: Beginning at northwest corner of section eighteen, township three, range seven west, thence south 160 poles; thence east 240 poles; thence south 36½ degrees west 278 poles to the outside slough; thence north 50 degrees west 26 poles; thence 36½ degrees west 75 poles to the northeast bank of the Tennessee river; thence down said river to the line of section 13, T. 3, R. 8 west; thence east 336 poles to the beginning, with the exception of one hundred and sixty acres off of the east end of the survey by line running due north and south, making in all 306.68 acres, more or less; also the following: Beginning 100 poles east of the southwest corner of the northwest quarter of section 18, T. 3, R. 7 west, thence west 100 poles; thence south 43 degrees east 134½ poles

3 to the starting point, making 28½ acres; also the following: Beginning at the northeast corner of the southeast quarter of section 18, T. 3, R. 7 west, thence west 80 poles; thence south 36¼ degrees west 125 poles to the outside slough; — north 50 degrees west 26 poles; thence south 36¼ degrees west 75 poles to the bank of the Tennessee river; thence 43 degrees east 190 poles with the river to Lamb's Ferry; thence north 35 degrees east 204 poles with the road; thence north 44 degrees west 155 poles to the starting point, making

213.53 acres, more or less; also the southwest quarter of the southwest quarter of section seven, T. 3, R. 7 W.; also a portion of the southeast quarter of section 12, T. 3, R. 8 west, beginning at the southeast corner of said section 12, thence west 42½ rods to a hickory tree; thence north to the north boundary of said quarter section number 12, beginning at the southeast corner of the quarter section; thence north 7¾ rods to a stake; thence west 52½ rods; thence 7¾ rods to a stake; thence beginning at the northeast corner of the southeast quarter of section 12; thence south with the section line to the beginning, containing 95 acres, more or less, of which he was possessed before the commencement of this suit, and after such possession accrued the defendants entered thereupon and unlawfully withhold and detain the same, together with two thousand dollars for the detention thereof.

H. E. JONES,
LAWRENCE COOPER,
Att'ys for Plaintiff.

4 Endorsed: No. 1403. Adam G. Adams, trustee, *vs.* Thomas J. Crittenden, Alfred Bowen. Filed in clerk's office this 30th day of August, A. D. 1886. A. W. McCullough, clerk.

UNITED STATES OF AMERICA:

Summons.

Circuit Court of the United States for the Northern District of Alabama, Northern Division.

The President of the United States of America to the marshal of said district, Greeting:

You are hereby commanded to summon Thomas J. Crittenden and Alfred Bowen, who are citizens of the State of Alabama, to appear before the hon. circuit court aforesaid, at the place of holding said court, at Huntsville, on the second Monday of October next, to answer the complaint of Adam G. Adams, trustee, who is a citizen of the State of Tennessee; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this first Monday of April, in the year of our Lord one thousand eight hundred and eighty-six.

Issued the 30th day of August, in the year of our Lord one thousand eight hundred and eighty-six.

[Seal Circuit Court U. S. N. D. of Alabama.]

Attest: A. W. McCULLOUGH,
Clerk U. S. Circuit Court, Northern District of Ala.

Endorsed: No. 1403. Circuit court of the United States, northern district of Alabama, northern division. Summons and complaint Adam G. Adams, trustee, *vs.* Thomas J. Crittenden, Alfred Bowen. Original. Issued this 30th day of August, 1886. A. W. McCullough, clerk.

Executed by serving a copy of the within summons and
5 complaint on defendant-, Thomas J. Crittenden & Alfred Bowen, this the 6 day of August, 1886.

A. H. KELLER,
U. S. Marshal,
By BALUS E. MATON, *Deputy.*

Returned and filed this 10th day of Sept., 1886.
A. W. McCULLOUGH, *Clerk.*

Continued.

Minute Book F, page 376.

ADAM G. ADAMS, Trustee,
vs.
THOS. J. CRITTENDEN *et al.* } 1403.

OCTOBER 28TH, A. D. 1886.

Come the parties, by their attorneys, and on motion of defendants' counsel and for good cause shown it is ordered by the court that this cause be continued.

Def'ts' Plea.

In the Circuit Court of the United States, Northern District of Alabama, Northern Division.

ADAM G. ADAMS, Trustee, Plaintiff,
vs.
THOMAS J. CRITTENDEN, ALFRED BOWEN, Defendants.

The defendants, for answer to the complaint, say they are not guilty of the matters and things therein alleged.

J. B. MOORE,
R. C. BRICKELL,
Att'ys for Defts.

Endorsed: No. 1403. Adam G. Adams, trustee, *vs.* Thomas J. Crittenden, Alfred Bowen. Defendants' plea. Filed in open court this 19th day of April, A. D. 1887. A. W. McCullough, clerk.

Agreement of Counsel.

In Circuit Court of United States for the Northern Division of the Northern District of Alabama.

ADAM G. ADAMS, Trustee, *vs.* THOMAS J. CRITTENDEN *et al.*

6 In this cause it is agreed that a certified copy of the deed under which the plaintiff claims title to the lands in controversy may be used as evidence in the place of the original, so far as the original would be evidence if produced; that the same was duly executed and recorded within 12 months from the date of execution.

It is further agreed that the deed under which the defendant claims title to the lands, executed by Robert Andrews, register in chancery of the chancery court of the county of Lauderdale, State of Alabama, and the deed from said Andrews to Arabella Weaver, of like date, were each duly executed by said Andrews as such register, and so far as evidence, if the execution thereof were duly proved, may be read in evidence without proof of execution; and it is admitted, as proved, that the defendant and said Arabella immediately on the execution of said deed went into possession of the lands therein described and have since been in possession, claiming title under said deeds; and it is admitted that the value of the annual rent of the cleared lands now in controversy is five hundred dollars and the value of the whole of the lands now in controversy is seven thousand dollars.

It is further admitted that Adam G. Adams, trustee, the plaintiff herein, on the execution of the deed from C. C. Harris, assignee, went into possession of said lands and continued in the occupancy
7 thereof until the said Robert Andrew, as register in chancery, placed the purchasers under the sale, made by him as register in chancery, in possession under his deeds, bearing date the 4th day of April, 1883.

It is further agreed that the printed record in cause No. 806, lately pending in the Supreme Court of the United States, may be used as if the original papers therein copied were now produced.

April 16, '87.

J. B. MOORE & R. C. BRICKELL,
Att'ys for Def'ts.
H. E. JONES AND LAWRENCE COOPER,
Att'ys for Plaintiff.

Endorsed: No. 1403. Adams *vs.* Crittenden. Agreement of counsel. Filed April 19th, 1887. A. W. McCullough, clerk.

Agreement of Counsel.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADAM G. ADAMS, Trustee, *vs.* THOMAS J. CRITTENDEN *et al.*

In this cause it is agreed that the same may be tried by the court without the intervention of a jury, and a jury is now waived.

The court may decide the cause and the judgment entered at the October term, 1887. Each party reserves the right to tender and have signed a bill of exceptions by the presiding judge during said October term, with the right to each party to appeal to the Supreme Court of the United States.

8 April 21st, 1887.

H. E. JONES AND LAWRENCE COOPER,
Att'ys for Plaintiff.
R. C. BRICKELL & J. B. MOORE,
Att'ys for Defendants.

Endorsed: No. 1403. Adams, trustee, *vs.* Crittenden *et al.* Agreement of counsel to waive a jury. Filed April 21st, 1887. A. W. McCullough, clerk.

Cause Submitted.

Minute Book F, page 452.

ADAM G ADAMS, Trustee,
vs.
THOMAS J. CRITTENDEN, ALFRED BOWEN. } 1403.

APRIL 21ST, A. D. 1887.

Come the parties, by their attorneys, and file their agreement in writing submitting this cause for trial without a jury, judgment to be rendered in vacation as of this term of court, to which the parties agree in open court.

Agreement of Counsel.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADAM G. ADAMS, Trustee, *vs.* THOMAS J. CRITTENDEN *et al.*

In this cause it is agreed that the same may be tried by the court without the intervention of a jury, and a jury is now waived.

The court may decide the cause and the judgment shall be entered at the April term, 1888, of said court. Each party reserves the right to tender and have signed a bill of exceptions by the presiding judge during said April term, with the right to each party to appeal to the Supreme Court of the United States.

9 October, 1887.

H. E. JONES AND LAWRENCE COOPER,
Att'ys for Plaintiff.
J. B. MOORE, R. C. BRICKELL,
Att'ys for Def't-.

Endorsed: No. 1403. Adam G. Adams *vs.* Thomas J. Crittenden *et al.* Agreement waiving jury. Filed Nov. 2nd, 1887. A. W. McCullough, clerk.

Cause Submitted.

Minute Book G, page 40.

ADAM G. ADAMS, Trustee,
vs.
THOMAS J. CRITTENDEN, ALFRED BOWEN. } 1403.

NOVEMBER 2ND, A. D. 1887.

Come the parties, by their attorneys, and submit this cause to the court as per written agreement on file.

Cont'd Under Former Order.

Minute Book G, page 166.

ADAM G. ADAMS, Trustee,
vs.
THOMAS J. CRITTENDEN *et al.* } 1403.

APRIL 12TH, A. D. 1888.

Come the parties, by their attorneys, and, on motion, it is ordered by the court that this cause be continued under former order.

Judgment Entry.

Minute Book G, page 179.

ADAM G. ADAMS, Trustee,
vs.
THOMAS J. CRITTENDEN, ALFRED BOWEN } 1403.

APRIL 25TH, A. D. 1888.

Come the parties, by attorneys, and this cause coming on to be heard by the court under an agreement in writing on file in this case waiving a jury, and after hearing the evidence and arguments adduced, it is ordered and adjudged by the court that the plaintiff is not entitled to recover, and that this suit be dismissed. It is further ordered that the plaintiff pay the costs in this behalf expended, for which let execution issue.

10 And said plaintiff now in open court prays for a writ of error to the Supreme Court of the United States, which is granted.

Opinion of Court.

In Circuit Court of the U. S., Northern Division, Northern District of Ala., at Huntsville.

A. G. ADAMS *vs.* THOS. J. CRITTENDEN *et als.*

Heard by agreement of counsel without a jury, and to be decided in vacation as in term time.

BRUCE, *J.:*

This is a suit in ejectment and the facts are all matter of record and undisputed.

The common source of title is William T. Weaver, who conveyed the lands in question to Westmoreland & Trousdale on the 11th day of Jan'y, 1875, and took their notes for a part of the purchase-money of the property, one of which, for $1,750.00, he transferred to Thos. J. Crittenden and the other, for a like sum, to Arabella Weaver.

Weaver and his firm of Fuqua & Weaver were adjudicated bankrupts in the district court of the U. S. for the northern district of Alabama on the 15th day of October, 1875, on petition against them by certain of their creditors filed May 17, 1875, and afterwards C. C. Harris was appointed assignee.

On the 13th day of December, 1875, Westmoreland and Trousdale,

by deed of general assignment for the benefit of their creditors, conveyed the lands in question with other property to William J. Wood, trustee.

11 On the 2nd day of April, 1876, an agreement was entered into by the parties to the bankruptcy proceeding and signed also by Wm. J. Wood, trustee, to the effect that the lands in question should be sold on petition of C. C. Harris, assignee in bankruptcy, in the bankrupt court, and the order was made April 25, 1876; sale had and confirmed by the bankrupt court, at which sale the plaintiff Adams became the purchaser, and that is the title upon which he places his right to recover in this suit.

The defendants claim title and show that on the 9th day of Feb'y, 1877, they, Thos. J. Crittenden and Arabella Weaver, commenced suits in the State chancery court of Lauderdale county, Ala., to enforce a vender's lien upon the lands in question, making the plaintiff herein, C. C. Harris, assignee, and others parties defendant, and prosecuted their suits to decree in that court, and at sales of the property made under the decrees of said chancery court became the purchasers of the lands in question, which is their title.

There are other facts and details in the case, but the foregoing is sufficient for a proper determination of the contention between the parties.

The bankrupt, Weaver, never surrendered any interest in the lands in question as a part of his estate in bankruptcy, and his conveyance of the lands being more than four months prior to the insti-

12 tution of the proceedings in bankruptcy against him, the title to the property in Westmoreland & Trousdale did not fall by reason of the bankruptcy of Weaver.

The assignee did institute a proceeding in the bankrupt court by petition to set aside the deed of Weaver to Westmoreland & Trousdale, but this proceeding was not pressed to a conclusion, perhaps on account of the agreement entered into by the parties to the bankrupt proceeding signed also by Wm. J. Wood, trustee, by attorney, on the 2nd day of April, 1876.

William J. Wood, as trustee, had possession of the lands at the time and the effect of the agreement must have been to surrender the lands to the bankrupt court, at least so far as Wood, trustee, had any interest in them. His interest in the lands was that acquired from Westmoreland & Trousdale, whose notes were out, as we have seen, for a part of the purchase-money of the property.

The right, then, to the lands acquired by the assignee in bankruptcy, Harris, was that of possession and the right to pay off the liens, which was a valuable right if the property was worth more than liens upon it.

The agreement of April 2nd seems to contemplate the preservation of these liens and their satisfaction out of the proceeds of the property, but the holders of these liens were not parties to the agree-

ment and were not even made parties to the petition which

13 was filed by the assignee to set aside the deed of Weaver to Westmoreland & Trousdale, which, we have seen, was never prosecuted to any conclusion.

It would seem, therefore, that the only interest in the lands which was surrendered to the bankrupt court was the interest acquired by Wood, trustee, as we have seen, and subject to the liens held by Thos. J. Crittenden and Arabella Weaver.

It is fundamental law, which needs the citation of no authority, that no person can be deprived of liberty or property without due process of law, and that due process means notice and an opportunity to be heard.

In this case how could the interest which Crittenden and Weaver had in and to this property be determined without notice by proper process in some of the recognized modes of regular legal proceeding. They were making no claim against the estate of the bankrupt, were not parties to that proceeding; and, while the creditors of the bankrupt and the assignee in bankruptcy might be of the opinion that the sale of the property by the bankrupt, Weaver, to Westmoreland & Trousdale was a fraud, and that Thos. J. Crittenden and Arabella Weaver were parties to such fraud, *but* no court has so adjudged in any suit or proceeding to which Crittenden and Weaver were parties and were heard or had the opportunity to be heard. On the contrary, the validity of their claims has been
14 passed upon by the State court and decrees rendered in their favor which cannot be questioned here if the court rendering such decrees had jurisdiction.

But it is argued that Crittenden and Weaver had the opportunity to be heard; that the property, the lands upon which they claimed to have liens, was in the possession of the assignee in bankruptcy appointed by the bankrupt court, and its doors were open to them to enter and propound their claims to the property. Admit that was so, they might have elected to propound their claims in the bankrupt court; but the question is, Were they compelled to do so under pain of a forfeiture of their rights in and to the property? for such seems to be the proposition of the plaintiff in this suit.

Is it law that holders of liens upon property, real estate in which a bankrupt has an interest, and who are otherwise strangers to the proceedings in bankruptcy, must propound their claims in the court of bankruptcy or lose them? True, it is, they may not in any way interfere with the possession of the property in the hands of the assignee, for, in dealing with the estate of the bankrupt, the jurisdiction of the bankrupt court is exclusive, and the statute provides for the issue of restraining orders, when necessary, to protect it from interference in the exercise of its jurisdiction.

But the proposition of the plaintiff is not merely that the suits in the State court by Crittenden and Weaver were prematurely
15 commenced and interfered with the administration of the property in the bankrupt court, but it goes to the extent that the holders of the liens upon the property, by failing to propound them in the bankrupt court, lost them; that no other court had jurisdiction to entertain any suit for their enforcement, and that the decrees in the State chancery court of Lauderdale county, Alabama, were void, and consequently the title derived from sales under such decrees was void also.

The sale in the bankrupt court under which the plaintiff claims title was confirmed Oct. 17th, 1876, while the suits of Crittenden and Weaver in the State chancery court were commenced in Feb'y 9, 1877, and the question suggests itself, what power or authority the bankrupt court could exercise over the property after such sale, which covered all the interest which, under the agreement of Ap'l 2, '76, was surrendered to the bankrupt court.

The argument in support of the pl'ff's proposition is based upon sect- 711 and 4972 of the Revised Statutes of the the United States. Sect. 711 provides:

"The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several States;" and the sixth subdivision is in these words: "Of all matters and proceedings in bankruptcy."

If the suits of Thos. J. Crittenden and Arabella Weaver in
16 the State chancery court of Lauderdale Co. to enforce their alleged liens upon the lands in question could be held to be matters and proceedings in bankruptcy, then indeed they would be without the jurisdiction of that court or any State court. But were these suits matters or proceedings in bankruptcy within the meaning of that sect.?

The suits in their very nature did not arise out of any right granted or provision of the bankrupt law of the United States, but, on the contrary, were suits well recognized as belonging to the equity jurisdiction of the courts of the State of Alabama.

True, the assignee in bankruptcy of Wm. T. Weaver was made a party defendant in those suits, and had, or rather had had, an interest in the lands upon which the plaintiffs in these suits were seeking to enforce vendor's liens; but did that make the suits matters or proceedings in bankruptcy?

The exclusive jurisdiction of the bankrupt court under sect. 711 of the Revised Statutes was the jurisdiction vested in the court to carry out and administer the bankrupt law from the institution of the proceedings in bankruptcy by or against a bankrupt up to his discharge and the collection of his assets and their distribution among his creditors according to the provisions of the bankrupt act.

This jurisdiction does not have the effect to draw to itself
17 all controversies between the assignee in bankruptcy and parties strangers to the bankruptcy touching property or rights of property vested in such assignee.

Eyster *vs.* Goff, 91 U. S., 521.
Adams *vs.* Collier, 122 U. S., 382.
Goodrich *vs.* Wilson, 119 Mass., 429.

Certain cases are cited from the supreme court of Alabama in support of the plaintiff's proposition, but it is not deemed necessary to comment upon those cases, for the record in this case shows that since the opinions in those cases were rendered the decrees of the state chancery court, under which the defendants claim title in this suit, have been under review by that court and have been affirmed.

Plaintiff insists that his position is further supported by a consideration of sect. 4972 of the Revised Statutes, which provides:

The jurisdiction conferred upon the district courts as courts of bankruptcy shall extend—

1st. To all cases and controversies between the bankrupt and any creditor * * *

2nd. To the collection of the assets of the bankrupt.

3rd. To the ascertainment and liquidation of the liens and other specific claims thereon.

4th. To the adjustment of the various privities and conflicting interests of all parties."

The position is that under this statute the liens of Crittenden and Weaver upon the property in question could be adjusted and
18 liquidated only in the bankrupt court. The statute, however, is that the jurisdiction shall extend to the liquidation of the liens, &c., and it is not questioned that upon proper proceedings and with the proper parties before the court such might have — done and all parties concluded thereby.

But Crittenden and Weaver were not before the court at all, and while the jurisdiction and power of the bankrupt court might have been invoked to hear and determine their rights under their alleged liens it was not done, and therefore they were not concluded by the action of the bankrupt court, which must be held to have been subject to their rights in the property.

To say that because the bankrupt court had power given by the statute we are considering to liquidate and adjust these liens upon the property, and that therefore no other creditor had power to do so is to say what the statute does not say, and, as we have already seen, suits to enforce a lien upon real estate are, not strictly speaking, either matters or proceedings in bankruptcy to which the exclusive jurisdiction of the bankrupt court applies.

It is said the bankrupt court ordered and confirmed the sale of the lands, and not a mere interest in the lands in question, and doubtless this was so as to all parties before the court; but orders of this kind, especially when asked for by agreement of counsel,
19 are granted, perhaps, too freely, almost as matter of course; but, in whatever language couched, they must be held to apply only to the subject-matter and the parties properly before the court.

Admit the jurisdiction of the bankrupt court upon mere petition to settle and adjust property rights, still it must be done in some formal way upon process; and the idea that the bankrupt law requires parties in interest under the facts in the case at bar to come forward and propound their claims cannot be maintained, either upon principle or authority.

The court finds for the defendants, and it is so ordered.

H. E. JONES,
LAWRENCE COOPER,
For Plaintiff.

R. C. BRICKELL,
J. BURNS MOORE,
For Def'ts.

Endorsed: No. 1403. Adam G. Adams, trustee, *vs.* Thomas J. Crittenden, Alfred Bowen. Opinion of court. Filed April 25th, 1888. A. W. McCullough, clerk.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the United States.

The President of the United States to the honorable the judges of the circuit court of the United States for the northern division of the northern district of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, between
20 Adam G. Adams, trustee, plaintiff in error, and Thomas J. Crittenden and Alfred Bowen, defendants in error, — hath happened, to the great damage of the said Adam G. Adams, trustee, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Samuel F. Miller, senior associate justice—having precedence, the Chief Justiceship being vacant—of the said Supreme Court, this 25th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

[Seal Circuit Court U. S., N. D. of Alabama.]

A. W. McCULLOUGH,
Clerk U. S. Circuit Court.

21 Allowed in open court by—
JOHN BRUCE,
District Judge, Presiding as Circuit Judge.

Endorsed: Adam G. Adams, trustee, *vs.* Thomas J. Crittenden *et al.* Writ of error. Filed in clerk's office this 25th day of April, 1888. A. W. McCullough, clerk.

A copy of the within writ of error was lodged in my office for said Thomas J. Crittenden and Alfred Bowen, defendants in error, on the 26th day of April, A. D. 1888, and within sixty days, Sundays excluded, after the rendering of the judgment in said cause.

A. W. McCULLOUGH, *Clerk.*

Citation.

UNITED STATES OF AMERICA, *ss:*

To Thomas J. Crittenden and Alfred Bowen, Greeting;

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next (1888), pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern division of the northern district of Alabama, wherein Adam G. Adams, trustee, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

22 Witness the Honorable John Bruce, judge of the circuit court of the United States for the northern division of the northern district of Alabama, this 25th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

JOHN BRUCE,
District Judge, Presiding as Circuit Judge.

Endorsed: Adam G. Adams, trustee, *vs.* Thomas J. Crittenden *et al.* Citation. Filed this 25th day of April, 1888. A. W. McCullough, clerk.

Due and legal service of the within citation is hereby acknowledged.
April 27, 1888.

R. C. BRICKELL,
Att'y for Def'ts.

Bond.

Know all men by these presents that we, Adam G. Adams, trustee, and A. Campbell, are held and firmly bound unto Thomas J. Crittenden and Alfred Bowen in the full and just sum of two hundred and fifty dollars, to be paid to the said Thomas J. Crittenden and Alfred Bowen, their certain attorney, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of April, A. D. 1888.

Whereas lately at a regular term, in a suit depending in the circuit court of the United States for the northern division of
23 the northern district of Alabama between Adam G. Adams, trustee, and Thomas J. Crittenden and Alfred Bowen, judgment was rendered against the said Adam G. Adams, trustee, and the said Adam G. Adams having prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment aforesaid, and the citation having issued directed to the said Thomas J. Crittenden and Alfred Bowen, citing and admonishing them to be

and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Adam G. Adams, trustee, shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

ADAM G. ADAMS, *Trustee.* [SEAL.]
A. CAMPBELL. [SEAL.]

Sealed and delivered and approved in the presence of—
JOHN BRUCE, *Judge.*

Endorsed: Adam G. Adams, trustee, *vs.* Thomas J. Crittenden *et al.* Bond for costs. Filed this 25th day of April, 1888. A. W. McCullough, clerk.

Bill of Exceptions.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

24 ADAM G. ADAMS, Trustee,
vs.
THOMAS J. CRITTENDEN *et als.*

Be it remembered that at the April term, 1888, this cause coming on to be heard before the Honorable John Bruce, judge of the district court of the United States, sitting as judge of the circuit court of the United States, the following proceedings were had:

This case was tried upon the following facts:

It was agreed that William T. Weaver and his firm of Fuqua & Weaver, citizens of Lauderdale county, in the northern district of Alabama, were adjudged bankrupts in the district court of the United States for said district on the 15th day of October, 1875, on the petition of creditors filed against them on the 15th day of May, 1875. On the 30th day of October, 1875, Christopher C. Harris was appointed and qualified as assignee in bankruptcy of said William T. Weaver and of the mercantile firm of Fuqua & Weaver, of which the said William T. was a member, and an assignment of the property of the said William T. and of said firm of Fuqua &
Weaver was regularly made to said Harris by Joseph W.
25 Burke, register of said court.

Previous to said Weaver's bankruptcy, to wit, on the 11th day of January, 1875, the said William T. Weaver conveyed to Westmoreland and Trousdale the certain lands sued for in this action. Among other considerations mentioned in the deed of conveyance (amounting in all to about ten thousand dollars) were two promissory notes of said Westmoreland and Trousdale, payable to said Weaver, for $1,750 each. One of these notes was transferred by said Weaver to Arabella Weaver and the other was transferred to

Thomas J. Crittenden, the real parties defendant in this case. On the 15th day of December, 1875, Westmoreland and Trousdale, by their deed of general assignment for the benefit of their creditors, conveyed the lands in question to William J. Wood, trustee. On the 30th day of November, 1875, the said Christopher C. Harris, as assignee of W. T. Weaver, bankrupt, filed a petition in said bankrupt court against Westmoreland and Trousdale and William J. Wood, trustee, to set aside as fraudulent against the creditors of said W. T. Weaver the conveyance made by said William T. Weaver to said Westmoreland and Trousdale.

On the 2nd day of April, 1876, before answer was made to
26 said petition, an agreement was entered into by the parties to the bankruptcy proceedings and executed also by William J. Wood, trustee, that the lands in question be surrendered to said C. C. Harris, as assignee of said William T. Weaver, to be sold under the orders and decree of said bankrupt court. In said agreement all questions touching the liens retained in said notes which had been transferred by said William T. Weaver to Arabella Weaver and Thomas J. Crittenden were reserved; but it was a part of the agreement that the sale of the lands by the bankrupt court should be absolute and the liens of said notes, if any, should be transferred from the land to the proceeds arising from the sale of the lands. Arabella Weaver and Thomas J. Crittenden were not parties to this agreement, and it does not appear that they had any notice of the agreement. Said agreement is as follows:

In order to facilitate a settlement of the matters in controversy in the bankrupt court at Huntsville, Alabama, in regard to a certain tract of land in Lauderdale county conveyed by W. T. Weaver to Westmoreland & Trousdale, and to speed the settlement of the bankrupt estate of the late firm of Fuqua & Weaver, and
27 also of the firm of Westmoreland & Trousdale, who have made an assignment to William J. Wood, as trustee, for the benefit of all their creditors, it is hereby agreed—

1. That Westmoreland & Trousdale and William J. Wood, as trustee, convey to C. C. Harris, assignee of Fuqua & Weaver, all the right, title, and interest which they or either of them have in said land.

2. That, on the application of said Harris, a decree be rendered by the bankrupt court ordering the sale of said land for one-third cash and balance in one and two years, with interest.

3. That a settlement be made between Fuqua & Weaver and Westmoreland & Trousdale to ascertain what amount was justly due by Fuqua & Weaver and W. T. Weaver to Westmoreland & Trousdale at the time of the conveyance of said land; also what amounts have been paid since that time by Westmoreland & Trousdale or either of them in farther satisfaction of the purchase-money for said land, allowing them interest on all indebtedness, as above named, to date — settlement; and it is agreed that if we cannot agree upon the amounts sought to be ascertained by the provisions of this paragraph —— —— is hereby chosen as umpire to decide the same, and we agree to abide by his decision.

28 4. That C. C. Harris, as assignee of Fuqua & Weaver, receive as a part of their assets the rents realized from said lands for the year 1875, and that out of the first assets of Fuqua & Weaver coming into his hands he pay over to William J. Wood, as trustee for Westmoreland & Trousdale, the amount found to be due said firm of Fuqua & Weaver and W. T. Weaver by the settlement and accounting provided for in the preceding paragraph hereof.

5. It is distinctly understood that this agreement shall not in any manner affect any question in regard to the liens and equities claimed on said lands by the parties or either of them who hold notes given by Westmoreland & Trousdale, purporting to be for purchase-money for said land, except that it is agreed that the land when sold shall be sold free of all incumbrance, and that in any litigation in regard to said liens or claims and in regard to the legal character and status of the sale of said land by W. T. Weaver to Westmoreland & Trousdale the money arising from the sale of said land, as hereinbefore provided for, shall stand in place of the land.

This agreement is signed subject to the approval of the bankrupt court. If not approved the parties stand *in statu quo*.

O'NEAL & O'NEAL,
WM. T. BROCK,
R. F. SIMPSON,
Att'ys for Shane, Harris & Co., Thos. Scantlin & Sons,
29 *and White & Langstoff & Co.*
C. C. HARRIS,
Assignee of Fuqua & Weaver.
H. C. & G. P. JONES,
Att'ys for Westmoreland & Trousdale's Trustee.
R. McFARLAND, *Att'y.*
R. O. PICKETT,
Att'y for Low & Whitney, Gathright & Herr, Topp, Leathers & Co., John Thomas & Co.

(Endorsed:) Agreement of parties. Filed in office this 22nd April, '76. A. W. McCullough, clerk U. S. district court for the northern district of Alabama.

This agreement was made a decree of the bankrupt court in the case, and the lands in question were ordered by the court to be sold by the said C. C. Harris, assignee of said William T. Weaver, bankrupt. Under said decree said C. C. Harris, as assignee, after legal advertisement, sold said lands, at public outcry, on the 2nd day of October, 1876, for one-third cash and balance in one and two years, retaining liens for deferred payment, as ordered by the decree of the bankrupt court; at which sale the plaintiff in this case became the purchaser. Said sale was reported by said C. C. Harris, assignee, to the said bankrupt court, and the same was confirmed, and the said C. C. Harris, as such assignee, was ordered by said bankrupt court to
30 make and execute a deed of conveyance to said lands to said plaintiff, which was done. (The said deed was read in evidence.) Under this deed the plaintiff was put in possession

of the lands. Said deed was executed on the 16th day of November, 1876. It is through this deed and the foregoing proceedings the plaintiff claims title to the said lands sued for in this case.

On the 9th day of February, 1877, while the proceedings in bankruptcy were still pending, the said Arabella Weaver and the said Thomas J. Crittenden filed their separate bills in the State chancery court of the county of Lauderdale against W. T. Weaver, C. C. Harris, as assignee in bankruptcy of William T. Weaver, bankrupt, W. J. Wood, as trustee of Westmoreland & Trousdale, and A. G. Adams, trustee, the plaintiff in this case, to establish liens on said lands for the payment of each of the aforesaid notes transferred to them, respectively, by said William T. Weaver. Answers were filed by A. G. Adams, trustee, and C. C. Harris, assignee, and the jurisdiction of the State court of chancery to ascertain and enforce liens on the lands in question was denied and the title of A. G. Adams, trustee, derived through the bankrupt court was set up in bar of the proceedings in said cases in said State court.

The defense of C. C. Harris, assignee, and of A. G. Adams,
31 trustee (the plaintiff in this case), to the jurisdiction of the State court was disallowed and a decree entered in behalf of each of said complainants declaiming their liens and ordering said lands to be sold to satisfy the same. A petition was then filed by said A. G. Adams, trustee, and C. C. Harris, assignee, in the said bankrupt court, for the purpose of enjoining and restraining said Arabella Weaver and Thomas J. Crittenden and the register of said State chancery court from enforcing said decrees in said State court of chancery, on the ground of the want of jurisdiction in the State court. An injunction was granted, but afterwards the injunction was dissolved and the petition dismissed by the court. Thereupon said cases in said State court of chancery were appealed to the supreme court of Alabama by the defendants, Adams, trustee, and C. C. Harris, assignee, and were by said court affirmed. Under said decrees in said State court of chancery the register of said court proceeded to sell said lands and did sell the same, and said sale was confirmed by said State court.

At said sale the said Arabella Weaver and Thomas J. Crittenden became the purchasers of said lands by bidding their debts for the same. A deed was made to them by said register in chan-
32 cery, and they were put in possession of said lands by said register in chancery. The defendants claim title to the lands in question under said deed made to them by said register in chancery.

It was agreed that the value of said lands is seven thousand dollars. The deed was made to the said Arabella Weaver and Thomas J. Crittenden to the lands in question by said register in chancery on the 4th day of April, 1883, and plaintiff's tenants were ousted in their possession, and the defendants, on that day, were placed in possession, and their tenants have since remained and are now in possession of said lands.

It is agreed that the value of the rents of said lands is five hundred dollars per annum.

The question of title and of rentals was submitted to the court, upon the foregoing facts, and upon the following agreement, waiving a jury, which was in writing:

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

ADAM G. ADAMS, Trustee, *vs.* THOMAS J. CRITTENDEN *et al.*

33 In this cause it is agreed that the same may be tried by the court without the intervention of a jury, and a jury is now waived.

The court may decide the cause, and the judgment shall be entered at the April term, 1888, of said court.

Each party reserves the right to tender and have signed a bill of exceptions by the presiding judge during said April term, with the right to each party to appeal to the Supreme Court of the United States.

October, 1887.

H. E. JONES AND
LAWRENCE COOPER,
Att'ys for Plaintiff.
J. B. MOORE,
R. C. BRICKELL,
Att'y- for Def't-.

(Endorsed:) No. 1403. Adam G. Adams *vs.* Thomas J. Crittenden *et al.* Agreement waiving jury. Filed Nov. 2nd, 1887. A. W. McCullough, clerk.

This was all the evidence.

Thereupon judgment was rendered in the case in behalf of the defendants and against the plaintiff; and to the action of the court in rendering judgment for said defendants the plaintiff in open court duly excepted, and prayed for a writ of error to the next term of the Supreme Court of the United States, sitting at Washington; which was granted.

34 Wherefore plaintiff tenders this his bill of exceptions, which he prays may be signed and sealed by the court and made a part of the record in this cause; which is accordingly done in open court this 25th day of April, A. D. 1888.

JOHN BRUCE, *Judge.* [SEAL.]

Endorsed: No. 1403. Adam G. Adams, trustee, *vs.* Thomas J. Crittenden *et als.* Bill of exceptions. Filed in open court April 25th, A. D. 1888. A. W. McCullough, clerk.

Assignment of Errors.

The plaintiff assigns the following errors as apparent in the opinion and judgment of the court:

It is conceded in the opinion of the court, upon which the judgment of the court is based, that the common source of the titles claimed by both the plaintiff and the defendants was W. T. Weaver.

That W. T. Weaver was adjudged bankrupt.

That C. C. Harris was appointed and qualified as assignee in bankruptcy of said W. T. Weaver.

That the lands in controversy were surrendered to said C. C. Harris, assignee in bankruptcy of said W. T. Weaver, and passed within the jurisdiction of the bankrupt court, at Huntsville, Alabama, in which the adjudication of bankruptcy had been made against said Weaver.

That the bankrupt court took jurisdiction of said lands and ordered the same sold.

That the same were sold under the orders of the bankrupt court by said C. C. Harris, assignee, to the plaintiff in this case and the sale confirmed to him by the bankrupt court, title made, &
35 plaintiff put in possession.

The facts show, and it is conceded in the opinion of the court, that W. T. Weaver, a short time before he was adjudged bankrupt, made a conveyance of the lands in question, taking certain notes from the purchasers, retaining a lien on the lands which were transferred to the defendants in this case.

It is shown by the facts, and conceded in the opinion of the court, that, soon after his appointment as assignee in bankruptcy of W. T. Weaver, said C. C. Harris, as assignee as aforesaid, filed a petition in bankruptcy against the parties to whom said W. T. Weaver had conveyed said lands for the recovery of the same, and charged therein that said conveyance was made to defraud the creditors of said W. T. Weaver.

It is further shown and conceded that said lands were surrendered to the assignee by the venders of said W. T. Weaver, bankrupt, without a contest, under an agreement that was made a decree of the bankrupt court in the case.

It was error in the court to hold that after the surrender of the lands in question to the assignee in bankruptcy of W. T. Weaver, bankrupt, and after the bankrupt court had asserted its jurisdiction over the land, as a part of the assets of said bankrupt, that the defendants, although the case was still pending in bankruptcy and the doors of the bankrupt court were still open to them, could ignore the proceedings in bankruptcy and go into a State court and there prosecute a case against the bankrupt and his assignee and
36 against the purchaser of the lands, holding title under the bankrupt court, for the enforcement of liens on the bankrupt's estate created by the bankrupt himself & practically annul the proceedings in bankruptcy.

It was error in the court to hold that the title to the lands in question made by W. T. Weaver did not fall by reason of the bankruptcy of Weaver when they were surrendered to the assignee of Weaver by the venders of Weaver without a contest in a case brought against them for the recovery of the land under a charge of fraud.

The limitation of four months referred to by the court does not

prevent recovery of property by an assignee in bankruptcy that had been conveyed by the bankrupt in fraud of his creditors, nor does it prevent the voluntary surrender of property by fraudulent venders.

It was error in the court to hold that the jurisdiction of the bankrupt court does not have the effect to draw to itself all controversies between the assignee in bankruptcy and parties holding claims touching the property or rights of property vested in the assignee. The amendment of the bankrupt act of June 22, 1874, vests the jurisdiction of all such questions in courts of the United States sitting as courts of bankruptcy, "exclusive of the courts of the several States." The authorities cited by the court do not sustain the position assumed by the court on this question.

It was error in the court to hold that, although the bank-
37 rupt court had jurisdiction of the property and the defendants might have come into the bankrupt court to enforce their liens, that they had the right, at the same time, to go into the State court to enforce them. This makes the jurisdiction of the bankrupt court & the State court concurrent for the enforcement of liens upon the assets of bankrupts, when the bankrupt act of June 22, 1874, Revised Statutes, sec-. 711 & 4972, makes the jurisdiction of the bankrupt court for such purposes "exclusive of the courts of the several States."

It was therefore error for the court to hold that the plaintiff's title acquired by his purchase of the lands in question at a sale made in pursuance of the orders of the bankrupt court, having full and complete jurisdiction of the land, could be set aside by proceedings instituted in a State court pending the proceedings in bankruptcy by parties claiming liens upon the assets of the bankrupt, who had failed to come into the bankrupt court & prove their claims, as they were required to do by the terms of the bankrupt act.

The judgment against the plaintiff and in favor of the defendants is therefore prayed to be reversed and corrected by the honorable Supreme Court of the United States.

H. E. JONES,
LAWRENCE COOPER,
Att'ys for Plaintiff.

Endorsed: No. 1403. Adam G. Adams, trustee, *vs.* Thomas J. Crit-
tenden *et al.* Assignment of errors. Filed in clerk's office this
38 15thday of Sept., A. D. 1888. A. W. McCullough, clerk.

UNITED STATES OF AMERICA,
Northern District of Alabama:

I, A. W. McCullough, clerk of the circuit court of the United States of America in and for said district, do hereby certify that the above and foregoing pages, numbered from one to thirty-eight, inclusive, contain a true, full, and complete transcript of the record in the case of Adam G. Adams, trustee, *vs.* Thomas J. Crittenden and Alfred Bowen as fully as the same does appear on file and of record in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at office in the city of Huntsville, in said district, this 1st day of October, A. D. 1888.

[Seal Circuit Court U. S., N. D. of Alabama.]

A. W. McCULLOUGH,
Clerk U. S. Circuit Court, Nor. Dist. of Alabama.

Endorsed on cover: N. Alabama C. C. U. S. No. 1336. Adam G. Adams, trustee, plaintiff in error, *vs.* Thomas J. Crittenden and Alfred Bowen. Filed October 15, 1888.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1889.

—No. 1893.—

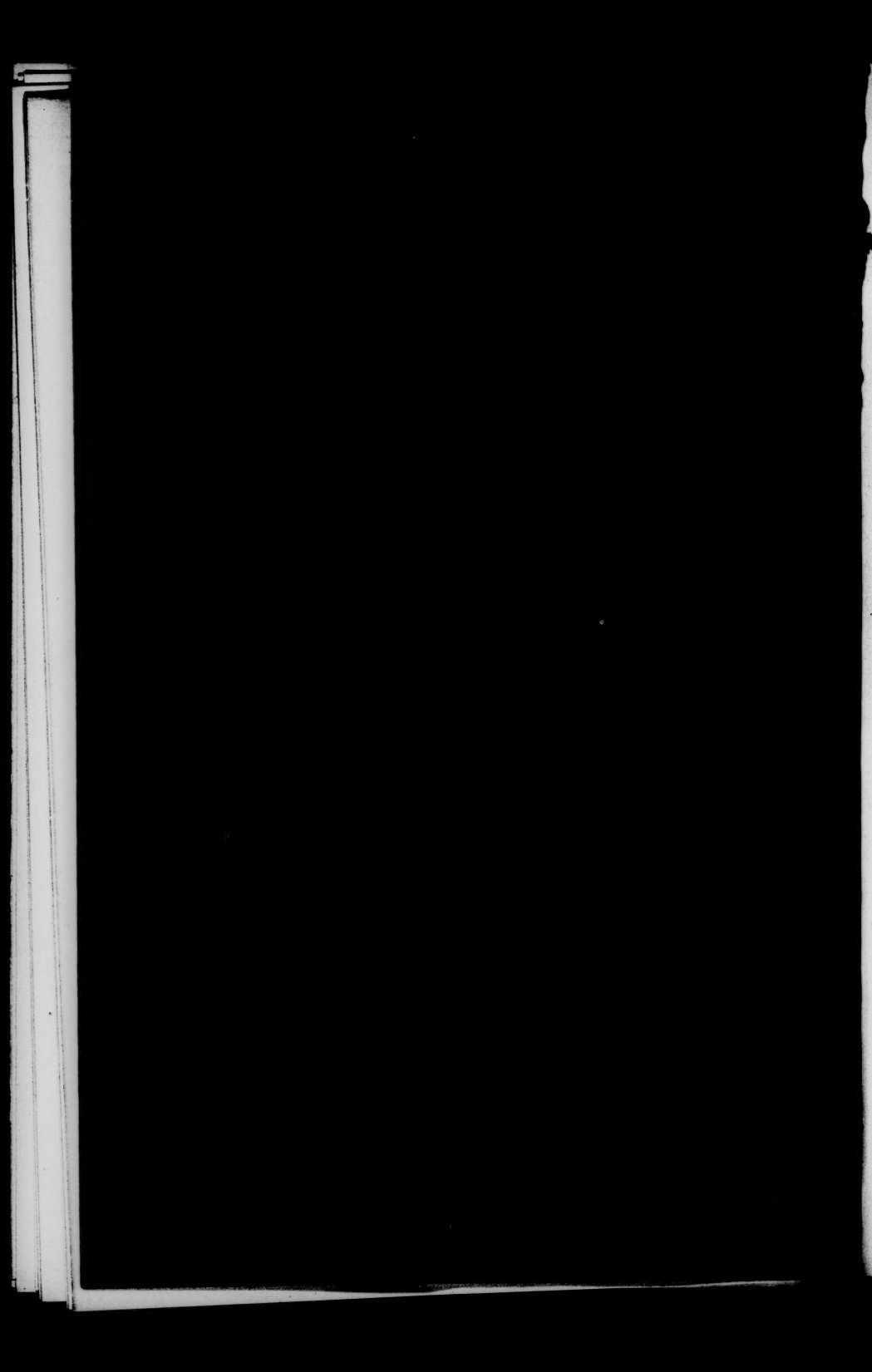
ADAM G. ADAMS, Trustee, Plaintiff in Error,

vs.

THOMAS J. SKITTERDEN AND ALFRED BOYD.

IN ERROR to the CIRCUIT COURT of the UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

Brief of Plaintiff in Error.



A. G. ADAMS, Trustee.
vs.
THOS. J. CRITTENDEN, et al.

SUPREME COURT, U. S.
Docket No. 1336,
October Term, 1888.

ACTION IN EJECTMENT.

FACTS.

This cause was submitted to the decision of His Honor, Judge John Bruce, sitting as Circuit Judge for the Northern District of Alabama, at Huntsville, Ala., on the following agreed facts, and without the intervention of a jury.

It was agreed that W. T. Weaver was adjudged a bankrupt on the 15th day of October, 1875, by the bankrupt court, at Huntsville, Alabama. That C. C. Harris was appointed and qualified as assignee in bankruptcy of said W. T. Weaver, bankrupt. That the land in controversy had been conveyed by W. T. Weaver, a short time previous to his bankruptcy, to Westmorland & Trousdale. That, as a part of the consideration mentioned in the deed, Westmorland & Trousdale had executed two notes to W. T. Weaver for $1770.94 each, a lien being retained by said Weaver to secure the notes. That said Weaver transferred said notes, one to his mother, Arabella Weaver, and the other to his cousin, Thos. J. Crittenden, the defendants in this case. That after his appointment and qualification as assignee in bankruptcy of said W. T. Weaver, said C. C. Harris, as such assignee, filed his petition in the bankrupt court at Huntsville, Ala., against said Westmorland & Trousdale, for the recovery of said land, upon the ground that the conveyance made to them by said W. T. Weaver, bankrupt, was fraudulent.

That no defense was made to the petition, but the land was surrendered to C. C. Harris, assignee, etc, to be administered as a part of the assets of said W. T. Weaver, bankrupt, according to the terms of a consent decree entered in the cause. Record, page 14 & 15.

By this decree it was stipulated that the land in question when sold under the order of the bankrupt court, should be sold absolutely, free from all liens, and that the liens, if any, held by the two notes in questions, should be transferred to the fund arising from the sale of the land, in lieu of the land.

That after its surrender to the assignee in bankruptcy of said W. T. Weaver, the land was sold by the said assignee under order of the bankrupt court, at which sale the plaintiff, A. G. Adams, Tr., became the purchaser. That the sale was reported to the bankrupt court and confirmed. That in accordance with the order of said court a deed was made by the assignee to the purchaser, the plaintiff in this action, and he was put in possession.

That the defendants, to whom said two notes had been transferred, were not parties to the consent decree under which the land was surrendered to the bankrupt court, and that they never made themselves parties to the bankrupt proceedings, and never proved their claims against the land in bankruptcy.

About four months after the sale of the lands in bankruptcy and while the bankrupt court still held liens on the same, the defendants filed their bills in the state chancery court at Florence, Ala., against W. T. Weaver, the bankrupt, C. C. Harris, the assignee in bankruptcy of W. T. Weaver, bankrupt, A. G. Adams, Tr., the purchaser of the lands at said bankrupt sale and others, to have their liens upon the lands held by said notes, ascertained and liquidated, and asking for a resale of the said lands under the orders of said state court of chancery to enforce the sums. The proceedings and sale of the lands under the orders of the bankrupt court were fully set out in the bills filed in the state court.

C. C. Harris, as assignee in bankruptcy of W. T. Weaver and A. G. Adams, tr., the purchaser of said lands at the sale made by the bankrupt court, defended said bills on the ground that a state court of chancery had no jurisdiction to ascertain and enforce liens upon the assets of a bankrupt, after said assets had passed into the jurisdiction of the bankrupt court; and that under the act of congress of June 22, 1874, revised statutes 711 and 4972, courts of bankruptcy were vested with jurisdiction "*exclusive of the courts of the several states*" over such matters. The defense was overruled by the state court of chancery, the liens declared, and the lands ordered to be resold, After years of litigation and delay, the decree of said state court of chancery was, on appeal, affirmed by the supreme court of Alabama, the land resold under said decree, at which sale the defendants became the purchasers, at the price of their debts. That, in accordance with the orders of said state court of chancery a deed to the land was made to the defendants in this case by the Register of that court and the plaintiff was ousted of his possession by the defendants

It is agreed that the plaintiff claimes title and right to possession under his deed from C. C. Harris, Assignee in Bankruptcy of W. T. Weaver, bankrupt, made in pursuance of the aforesaid proceedings in bankruptcy, and that the defendants claim title and right to possession under a subsequent deed made to them in pursuauce of the subsequent proceedings in the state court of chancery.

See agreed statement of facts, record page 16.

It was agreed that the plaintiff was ousted of his possession by the defendants on April 4th, 1883.

That the land in controversy is worth $7,000.00 and the annual rentals $500.00. Rec. page 16.

Assignment of Error.

His honor, Judge Bruce, rendered a written opinion in the case, holding that the defendants not being parties to the proceedings in bankruptcy under which the lands in controversy were sold to the

plaintiff, were not bound by them: That although, by the surrender of the lands by the fraudnlent vendees of W. T. Weaver, to C. C. Harris, assignee in the bankruptcy of said W. T. Weaver, to be administered as a part of the assets of said Weaver, bankrupt, the bankrupt court obtained full jurisdiction over the lands, that this jurisdiction *was not exclusive of the jurisdiction of the state court*, and that the defendants had a right to elect to go either into the bankrupt court and enforce their liens, or to wait, as they did, until the land was sold under the order of the bankrupt court, and then go into a state court of chancery and have their claims adjudicated and enforced by a resale of the land. That having chosen the latter course they got a better title to the land than the plaintiff, and therefore rendered judgment in favor of the defendants and against plaintiff.

See opinion of the court Record page 6–10.

This was error—Because, by the terms of the amended bankrupt act of June 22, 1874, Revised Statutes Sec. 711 and 4972, the jurisdiction of courts of bankruptcy was declared to be "exclusive of the courts of the several states."

Argument.

Bankruptcy jurisdiction is a peculiar one, and of necessity must be an exclusive one. Else courts of bankruptcy could make no titles that could not be overthrown by state courts, and their administration of the estates of bankrupts rendered farcical.

This was demonstrated by the conflict of jurisdiction between courts of bankruptcy and state courts under the bankrupt Act of 1867, which gave to courts of bankruptcy "*original*" jurisdiction over the estates of bankrupts.

To remedy this defect, the amended bankrupt act of June 22, 1874, was passed by Congress, in which the jurisdiction of courts of bankruptcy was declared to be "EXCLUSIVE OF THE COURTS OF THE SEVERAL STATES," "over *all matters and proceedings in bankruptcy.*"

Revised Statutes U. S., sec. 711.

By the same amended act, this exclusive jurisdiction is made to extend—

"First. To all cases and controversies arising between the bankrupt and any creditor or creditors, who shall claim any debt or demand under the bankruptcy.

"Second. To the collection of all the assets of the bankrupt.

"Third. To the *ascertainment and liquidation of the liens and other specific claims thereon.*

"Fourth. To the adjustment of the various priorities and conflicting interests of all parties."

"Fifth. To the marshaling and disposition of the different funds and assets, so as to secure the rights of all parties, and due distribution of the assets among all the creditors."

"Sixth. To all acts, matters and things to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the estate, and the close of proceedings in bankruptcy." Revised Statutes U. S., sec. 4972.

The bankrupt act required every claim, secured or unsecured to be proven in the most rigid manner, according to forms and schedules prescribed. Revised Statutes, sec. 5,077.

This was to prevent preferences &c.

The court of bankruptcy, itself, could not allow a claim against the estate of a bankrupt unless so proven.

The latter clause of sec. 5,077 provides that "No claim shall be allowed unless all the statements set forth in such depositions shall appear to be true."

To attempt to set up a claim in a state court. against the estate of a bankrupt, without such proof, which can only be made in a court of bankruptcy, would be an attempt to nullify the provisions of the bankrupt act, and a contempt of the bankrupt court Davis vs. Anderson, 6 B. R. 159, citing authorities, 2 B. R. 427; 3 B. R. 198; 10 Ed. Bump. on Bkcy., page 317; Revised Statutes U. S. sec. 5081. By sec. 5081, the court or any creditor has a right to question every claim.

The validity of liens, and other claims against the estates of bankrupts, under the bankrupt act, depended on questions of preference and fraud growing out of a proper administration of the bankrupt act. Hence, state courts are not proper tribunals for their enforcement.

The defendants in this case never proved their claims in bankruptcy according to the requirements of the bankrupt act, and are therefore in no condition to ask any court to enforce them. The act expressly says that unless so proven they shall not be allowed.

The Supreme Court U. S., in Claflin vs Housman's assignee 3 Otto 130, held that congress had the power to make the jurisdiction of courts of bankruptcy "exclusive of the courts of the several states," and that by the amendment of June 22, 1874, it had done so.

The bankrupt courts had no jurisdiction except over "matters and proceedings in bankruptcy." This jurisdiction by the express terms of the statute was made "exclusive of the courts of the several states."

If, therefore, the bankrupt courts had no jurisdiction except an "exclusive" one, it follows, that when his Honor, Judge Bruce, held that when the land in question was surrendered to C. C. Harris, Assignee, as a part of the estate of W. T. Weaver, bankrupt, that it passed into the jurisdiction of the bankrupt court, that no state court, after that, could entertain jurisdiction over it to ascertain and enforce liens upon it existing at the time of the bankruptcy of said Weaver. It is urged that because the defendants did not make themselves parties to the bankruptcy proceedings and did not prove their claims in bankruptcy, that they are not bound by the proceedings in bankruptcy. Such a position is subversion of the whole purpose of the bankrupt act.

As shown above, secured creditors were compelled to come into the bankrupt court, where the estate was being administered, and prove their claims according to prescribed forms, or lose them. Revised Statutes, sec. 5,077.

"The bankrupt law is, then, the supreme law of the land binding alike upon federal and state tribunals, and wherever, by express words, or by necessary implication it affects state laws, the power of state courts, or the remedies of suitors therein, it is paramount."

10 Ed Bump. on Bankruptcy, page 327.

"The jurisdiction of a district court of tho United States, sitting as a court of bankruptcy, is *superior and exclusive* in all matters arising under the statutes. *The estate surrendered* is placed in the custody of the court, so sitting in bankruptcy, and the officer appointed to manage it, is accountable to the court appointing him and to that court alone. No court of an independent state jurisdiction can withdraw the property surrendered or determine in any degree the manner of its disposition." 10 Ed. Bunk on Bankruptcy, page 316. Citing authorities.

A suit against a bankrupt or an assignee in bankruptcy, as such, to enforce a lien on a part of the bankrupt's estate, brought in a state court was, under the act of June 22, 1874, void, for want of jurisdiction apparent on its face.

"*By the proceedings and adjudication*, jurisdiction is obtained of the bankrupt and his creditors, *and the court making the adjudication is the only one that can deal with the bankrupt and his criditors, and settle all conflicting claims, equities and controversies arising between them.* All such matters are exclusively within the jurisdiction of the court where the proceedings are pending: 10 Ed. Bump. on Bkcy. page 316 Citing authorities.

"The bankrupt court has jurisdiction over the debtor and all his creditors, *and also over all demands affecting the bankrupt's estate.* The secured creditor must prove his demand, and obtain the aid of the bankrupt court for its enforcement, and cannot wait until bankruptcy proceedings are closed, and then enforce his lien through the state court." 10 Ed. Bump. on Bkc'y, page 633.

His Honor, Judge Woods, in Hewitt vs Norton, 1st Woods R. page 71, held that after the property of a bankrupt was sold by the assignee it was too late for a creditor to attempt to reach it by proceedings in a state court. This was under the old bankrupt act that did not by express terms make the bankruptcy jurisdiction exclusive of the courts of the several states.

Special attention is called to the recent able review of the questions in this case in re Anderson, 23rd, Federal Reporter page 494 to 502.

[illegible]

It is urged that by the surrender of the land in question to the assignee of W. T. Weaver, bankrupt, that the bankrupt court got possession and jurisdiction of the land, *subject to the lien of the defendants.* If that be granted, still it does not alter the fact that any and all liens upon the assets of a bankrupt must be enforced, if at all, through the bankrupt court. The legal title to the lands, by the surrender to the assignee, and by operation of the bankrupt act, vested in the assignee, as the officer of the bankrupt court. "By the adjudication the bankrupt court, *eo instanti*, acquires jurisdiction of

the bankrupt and his estate,—*all creditors, secured and unsecured, and all persons having claims against the bankrupt estate.*" 10 Ed. Bump. on Bkc'y 328. Phelps vs Sellick 8 B R. 390; 11 B. R. 161.

"*All persons having claims against the bankrupt estate,*" are therefore, by operation of the bankrupt act, brought within the jurisdiction of the bankrupt court, and must prove their demands in the manner, and within the time required by the act, or lose them.

The defendants say they were not creditors of the bankrupt, Weaver; but what can it signify whether they were technically creditors of the bankrupt or not? They set up claims against the bankrupt's estate, pending proceedings in bankruptcy, and seek to enforce them in a state court by a suit against the bankrupt and his assignee, as such.

Judge Treat, in Davis vs Anderson 6 B. R. 145, discusses the question elaborately, and holds that the lien creditor must prove his demand in the bankrupt court or lose it. He further holds that if the lien creditor fails to prove his claim and the court sells the property free from all liens, he has no recourse. He closes his able opinion in these words. "This court has held from the commencement, that the secured creditors could not enforce their demands, except through the bankrupt court and has never hesitated to set aside sales made without its action after bankrupt proceedings were commenced."

The supreme court of Alabama in Steele vs Moody 53 Ala., 425, held. "The court of bankruptcy, by the filing of the petition, acquirs *full and exclsive jurisdiction* of the bankrupt and his estate." Opinion by Judge Brickell, C. J. Subsequently, in Glover vs Love, 68 Ala., 219, and in Pollock vs Hill, 69 Ala., in well considered opinions, the same court reassert the "exclusive jurisdiction" of the bankrupt court over all questions affecting a bankrupt's estate. It seems that these three decissions ought to have been conclusive of the question, in the courts of that state, independent of the express language of the amended bankrupt act of June 22, 1874. and a numerous and unbroken line of federal court decissions to the same effect. His Honor, Judge Bruce, in his opinion in this case, seems to think that the force of these three concurring opinions of the supreme court of Alabama is destroyed by the fact that the decree of the state chancery court at Florence was, on appeal, affirmed. When the decree in question was affirmed on appeal, no opinion in the case was rendered and the nature of the case, even, was not referred to in the affirmance.

This case was never reported and simply from the fact that no opinion was rendered Counsel for the plaintiff think they are justified, under the circumstances, in stating the facts in regard to the affirmance of the decree of the chancery court by the supreme court of Alabama in that case. The supreme court consisted at the time of Judge Brickell, Judge Stone and Judge Somerville.

At the time the case was called for trial, Judges Stone and Somerville alone were on the bench. Judge Brickell was in bad health and absent. When Mr. H. E. Jones, counsel for the appellants, arose to argue the case and stated to the court the nature of the questions involved, and was proceeding to argue the proposition that a state

court had no jurisdiction over suits against a bankrupt and his assignee to enforce liens upon the assets of a bankrupt that had already passed under the jurisdiction of the bankrupt court, the court stopped the counsel and told him it was needless to argue that proposition. That they had recently had the question before them, and after careful consideration had held that the bankruptcy jurisdiction was exclusive in such matters. After the counsel for the other side was heard the record was handed up. It seems that Judge Brickell, who was not present, got the record. He kept the record about a year, and a short while before resigning his place on the bench the decree of affirmance was entered, as stated, without an opinion.

Application was made to Judge Brickell for an opinion, by counsel for appellants, with a view to a motion for a rehearing. This was promised, with the further promise that counsel would be allowed ten days from the filing of the opinion in which to move for a rehearing.

Judge Brickell, soon after this, resigned his place upon the bench, and no opinion in the case was ever rendered.

It is to be presumed that the affirmance of the decree by the supreme court of Alabama, in the face of its own repeated rulings; in the face of the express language of a federal statute; and in the face of a long and unbroken line of federal court decisions, and this, without an opinion, in a case involving valuable property, was an inadvertence.

To substantiate this idea, the supreme court of Alabama, after the affirmance of the decree of the state chancery court at Florence, Lauderdale Co., in question, again had the question of the exclusive jurisdiction of the bankrupt courts before it in the case of Tenn., and Coosa River R. R. Co., vs East, reported in 75 Ala., page 516, involving a similar question to the one at bar, and they again reassert the doctrine of the exclusive jurisdiction of the bankrupt courts over such matters, as decided in the three cases referred to in 53 Ala., 425 68 Ala., 219; and 69 Ala, 15. In this last case the court, on page 528, in speaking of sales made by the bankrupt court, as this sale was, says—"no matter what may be the state of the conflicting claims and rights, the purchaser gets a good title and leaves the contestants to litigate over the money proceeds," The court intimates that the claimant would be entitled to notice. But the attention of the court is called to the fact that under the bankrupt act a claimant had to prove his claim in accordance with the requirements of the act to entitle himself to notice.

In no event could want of notice confer jurisdiction of the subject matter upon a state court, or deprive the bankrupt court of its jurisdiction. So that the question of notice cuts no figure in the case.

Counsel for the plaintiff assert, with the utmost confidence, that no respectable opinion can be found in the books, construing the amended bankrupt act of June 22, 1874, that holds that a state court could entertain jurisdiction of a suit against a bankrupt and his assignee to ascertain and enforce a lien upon a part of the bankrupt estate that had been surrendered to the assignee and gone into the jurisdiction

of the bankrupt court. There are a number of cases that arose under the bankrupt act of 1867 that held that the jurisdiction of the bankrupt courts under that act was not exclusive, and that the jurisdiction of the state courts, *if previously obtained*, was not displaced by proceedings in bankruptcy. This rendered the administration of the bankrupt act inefficient, and brought about a conflict of jurisdiction that the amended act of June 22, 1874, was intended to remedy. The attention of the court is called to the fact that the cases relied on by the counsel for the defendants originated under the act of 1867, before the jurisdiction of courts of bankruptcy were made "exclusive" by the amended act of June 22, 1874, and hence are not applicable.

Judge Bruce in his opinion cites several cases to sustain his idea of the *concurrent jurisdiction* of state courts with courts of bankruptcy over the estates of bankrupts, but, with due respect to his Honor, an examination of the cases referred to by him will show that they are not applicable, and do not sustain his position. Judge Bruce refers to the fact that the conveyance of the land in question by W. T. Weaver to Westmoreland & Trousdale was made more than four months before proceedings in bankruptcy were commenced. This can cut no figure in the case. The limitation of four months had reference only to acts of bankruptcy on account of which a party might be proceeded against by his creditors. It was in no sense a limitation of the time within which a fraudulent vendee of the bankrupt might be proceeded against by the assignee for the recovery of the property of the bankrupt. All property fraudulently conveyed by the bankrupt was vested, by the terms of the bankrupt act, in the assignee. Revised Statutes, Sec. 5,046. # 5,129

The surrender of this property, by the fraudulent vendees, to the assignee, put it in the jurisdiction of the bankrupt court, both as a matter of law and of fact, and this is conceded by Judge Bruce in his opinion. Judge Bruce says in his opinion, (Record page 9).

"If the suits of Thos. J. Crittenden and Arabella Weaver, in the state chancery court of Lauderdale Co., to enforce their alleged liens upon the lands in question could be held to be matters and proceedings in bankruptcy, then indeed they would be without the jurisdiction of that court or any state court." He evidently means not the suits, but the enforcement of the liens.

The bankrupt act in express terms defines some of the "*matters and proceeding in bankruptcy*," over which bankrupt courts have exclusive jurisdiction. Among other things, the act specifically mentions, as coming within this exclusive jurisdiction, and hence as embraced in "matters and proceedings in bankruptcy."—"The collection of all the assets of the bankrupt," and "The ascertainment and liquidation of the liens and other specific claims thereon."

If, then, suits against a bankrupt and his assignee to ascertain and enforce liens on the assets of the bankrupt are not within the exclusive jurisdiction of the bankrupt court, nothing is. His Honor, Judge Bruce, adds that such "suits in their very nature did not arise out of any right granted, or provision of the bankrupt law." Rec., page 9.

It is difficult to see how his Honor could come to such a conclusion right in the face of the language of the bankrupt act, providing that courts of bankruptcy should have exclusive jurisdiction to ascertain and enforce liens upon the assets of the bankrupt, (Sec. 4,972), and then requiring claimants of such liens to prove and enforce them in accordance with prescribed forms, or lose them. Sec. 5,077 Revised Statutes.

Mr. Bump, in his work on bankruptcy 10 Ed. page 327, thus lays down the law on this very question.

"Congress, in the enactment of laws on the subject of bankruptcies, has complete and plenary powers, unrestricted save as to uniformity. It has, in legislating upon the subject, *power to take from the state courts the administration of remedies for the enforcement of liens.*

* * * Closely connected with the power of collecting the assets, is that of ascertaining and liquidating the liens which may be claimed to exist upon these assets A proceeding to ascertain or liquidate a lien would be idle, unless the court has the power to restrain the parties from liquidating their liens without its intervention and to preserve the property by restraining its sale until the lien is ascertained to be good or void." How can such liens be ascertained to be "good or void," as against the bona fida creditors of the estate, unless tested according to the requirements of the bankrupt act, and shown not to have been given or accepted by way of preference, or otherwise in contravention of the act? It seems too clear for argument that these are "matters and proceedings in bankruptcy" in contemplation of the act.

Again, his Honor says, "It is fundamental law, which needs the citation of no authority, that no person can be deprived of liberty or property without due process of law, and that due process of law means notice and on opportunity to be heard," and concludes from this that the sale of the land in question by the bankrupt court was not binding on the defendants. His Honor overlooked the fact that congress had the right and the power to create for courts of bankruptcy an exclusive jurisdiction, and to prescribe the time, and the manner, and the courts in which claimants should propound their claims against the estates of bankrupts.

Congress having done so, it is not a question as to whether the defendants were deprived of their property (for provision was made for them by decree of the bankrupt court, in case they proved their claims and brought them within the provisions of the act), but the question is, did they prove their claims in the court and in the manner prescribed by the act? If they did not, it was their own fault. His Honor concludes that "the exclusive jurisdiction of the bankrupt court," did "not have the effect to draw to itself all controversies between the assignee in bankruptcy and parties strangers to the bankruptcy touching property or rights of property vested in the assignee." He quotes Eyster vs Goff, 91 U. S. 521; Adams vs Collier 122 U. S. 521; and Goodrich vs Wilson 119 Mass. 429, as authority for this conclusion. An inspection of these cases will show that not one of them sustains the proposition. It would be remarkable if they did.

For if the jurisdiction of the bankrupt court does not draw to itself all questions "*touching property or rights of property vested in the assignee*," the language of the act of June 22, 1874, is meaningless. Let us examine the cases referred to by His Honor, Judge Bruce. The case of Ester vs Goff, was brought in a U. S. district court in 1868 to enforce a mortgage three years before the bankruptcy of the mortgagor, and *six years before the passage of the amended bankrupt act.*

The court held that the foreclosure in that case was not rendered void by the subsequent bankruptcy of the mortgagor. The case of Adams vs Collier is utterly irrelevant. It does not touch the question of state court jurisdiction in questions of bankruptcy. U S. district and circuit courts have concurrent jurisdiction by the terms of the act; but the jurisdiction is "exclusive of the courts of the several states."

The case of Goodrich vs Wilson, 119 Mass. does speak of the "concurrent jurisdiction" of state courts with courts of bankruptcy, but it originated in 1871, before the jurisdiction was made "exclusive" by the act of 1874. A careful reading of this case shows that the court attempted to draw a distinction between questions growing out of "property or rights of property vested in assignees in bankruptcy," and property and rights of property that never constituted any part of the bankrupt's estate, and hence were *never vested in the assignee.* The court holds that neither the bankrupt act of 1867, nor the act of 1874, deprived state courts of jurisdiction over questions between the assignee and outsiders touching property, or rights of property, *that constituted no part of the bankrupt's estate.* The court, in the beginning of his opinion, expressly declares that the jurisdiction of courts of bankruptcy *does extend over the bankrupt and the administration and distribution of his estate.* In that case the assignee, under the act of 1867, sued in a state court to recover of a stranger to the bankruptcy funds *that did not legally constitute a part of the bankrupt's estate*, and the jurisdiction of the state court was sustained for that reason. A very different question presents itself when a party sues, in a state court, the bankrupt and his assignee to "ascertain and enforce" a lien upon property that had been surrendered to the assignee as a part of the assets of the bankrupt, and over which the bankrupt court had already asserted its jurisdiction. "The estate surrendered is placed in the custody of the court so sitting in bankruptcy, and the officer appointed to manage it is accountable to the court appointing him and to that court alone. No court of an independent state jurisdiction can withdraw the property surrendered, or determine in any degree the manner of its disposition." 10 Ed. Bump. on Bkc'y 316 citing authorities.

His Honor, near the close of his opinion, uses these words. "To say that because the bankrupt court had power given by the statute we are considering to liquidate and adjust these liens upon the property, and that therefore no other court (misprinted *creditor* in record) had power to do so, is to say what the statutes does not say, and as we have already seen, suits to enforce a lien upon real estate are not,

strictly speaking, either matters or proceedings in bankruptcy, to which the exclusive jurisdiction of the bankrupt court applies." To this we answer, bankrupt courts have no jurisdiction, except over "matters and proceedings in bankruptcy," any more than courts of admiralty have jurisdiction over questions outside of admiralty. Necessarily, then, when it is admitted that *any question or subject matter* is within the proper jurisdiction of a court of bankruptcy, it is to admit that it is a "matter" or "proceeding in bnnkruptcy."

As seen before, "*the ascertainment and liquidation of liens*" upon the assets of a bankrupt are specifically mentioned by the act itself, as within the exclusive jurisdiction of courts of bankruptcy. A bankrupt court could not enforce a lien, except on the assets of a bankrupt, and a state court, under the bankrupt act, could not enforce a lien upon the assets of a bankrupt. The bankrupt act expressly takes from state courts jurisdiction over such liens.

The bankrupt court and every creditor who had proven his claim in bankruptcy had a right to have every claim against the bankrupts' estate tested according to the requirements of the act, to prevent preferences &c. Revised Statutes Sec. 5,077. The claims of Arabella Weaver and Thos. J. Crittenden were transferred to them as creditors of the bankrupt just prior to his bankruptcy, and it may be that they received them as preferred creditors and did not prove their claims in bankruptcy because they could not make the required affidavits.

There is a line of cases, relied on by the defendants, such as the case of Winchester vs Heiskell, reported in 119 U. S. 450, and again with explanations in 120 U. S. 273, in which it was held that assignees in bankruptcy having voluntarily and by consent made themselves parties to suits pending in state courts were bound by the result, and were estopped from afterwards repudiating the jurisdiction of the state courts. But an inspection of these cases will show that the cases in the state courts to which the assignees became parties were begun before the amended bankrupt act of June 22, 1874, was passed, and that the action was pending in the state court anterior to the bankruptcy.

In the case of Winchester vs Heiskell the action was begun in the state court in 1869, and the state court had full jurisdiction over the snbject matter before any of the parties were adjudged bankrupt. The assignee in that case voluntarily went into the state court and made himself a party to proceedings already pending in order to assert his rights to property that had never been surrendered to him.

In the case at bar, the assignee in bankruptcy and A. G. Adams, trustee, were sued in the state court to enforce liens upon property that had already been surrendered to the assignee and had passed into the jurisdiction of the bankrupt court. They consented to nothing, but defended the cases solely on the ground of the want of jurisdiction in the state courts, and attempted to have the parties enjoined from prosecuting their cases in said court.

It is urged by plaintiff that in the face of the language of the act of June 22, 1874, consent of parties, even, could not give a state

court jurisdiction to ascertain and enforce a lien upon the estate of a bankrupt, pending proceedings in bankruptcy, and after the property in question had been surrendered to the assignee and passed within the jurisdiction of the bankrupt court. By the surrender to the assignee, it became a "matter in bankruptcy." A proceeding to *ascertain* and *liquidate* a lien upon property, after its surrender to an assignee in bankruptcy, and after the bankrupt court had asserted its jurisdiction over it, unless the requirements of the bankrupt act, in regard to the manner of proving such claims, were utterly disregarded, would necessarily be, in contemplation of the act, a "*proceeding in bankruptcy*" over which it was manifestly the purpose of the act to give the bankrupt courts jurisdiction "exclusive of the courts of the several states."

Consent of parties cannot give jurisdiction in cases where it is expressly denied by statute. Freeman on Void Judicial Sales, page 17–19. Abbott's Nat. Dig. Vol. 3, page 151, citing authorities.

Conclusions.

1st. The bankrupt court having absolute and exclusive jurisdiction of the property, had the power to sell it and make a good title. There is no question concerning the regularity of the proceedings in bankruptcy. The land was sold absolutely, and free from all liens, by the bankrupt court, deed made in regular form, and the plaintiff, the purchaser, was put in possession. This gave him absolute title, and entitles him to a recovery.

2ud. The plaintiff was in possession of the land under a deed made to him by the officer of the bankrupt court, in pursuance of a sale, made under the order of that court, having absolute and exclusive jurisdiction over the land. He was ousted by the defendants under subsequent proceedings in a state court having no jurisdiction over the subject matter. The proceedings in the state court were therefore void, and the plaintiff, for this reason, ought to recover.

3rd. It is agreed that the land in question was worth $7,000.00. That the annual rents were worth $500.00 for each year. That the plaintiff was ousted by the defendants on the 4th of April, 1883. Therefore the plaintiff ought to have a judgment for possession of the land, and a judgment against the defendants for the rentals of the land, at the rate of $500.00 a year, from April 4, 1883.

S. WATSON.
H. E. JONES.
LAWRENCE COOPER } *Atty's for Pltf. in Error.*

ADDENDA.

It will be seen from the record, page 14, that the land in controversy was surrendered to the assignee in bankruptcy of W. T. Weaver by Westmorland & Trousdale and their trustee, Wood, in settlement of the suit brought against them to recover the land on the ground that the transfer by Weaver to them was fraudulent. Clause 3 of the agreement of surrender is an almost nnequiuocal admission that the consideration mentioned in the deed was, in part at least, fictitious. The surrender of the land and its rentals to the assignee, without defense, was a concession that the transfer by Weaver was fraudulent. By section 5,046, Revised Statutes the title to all property fraudulently conveyed by the bankrupt was vested in the assignee by operation of the act. It follows, therefore, that the transfer by Weaver to Westmorland & Trousdale being a nullity, the notes given by them to Weaver, and transferred by him to the defendants, were without consideration and hold no lien on the land that could be enforced in a court of bankruptcy against the land after its surrender, to the assignee.

Under the bankrupt act the assignee took Weaver's title to the land as it was before the fraudulent transfer, and hence the notes in question, in contemplation of the bankrupt act, carried no liens on the land. To declare and enforce these so called liens in a state court, would, therefore, be in contravention of the bankrupt act.

By the amended bankrupt act of 1874, an assignee in bankruptcy could not be sued at all in a state court to enforce a claim against the estate in his hands, he was answerable alone to the court appointing him, and he could sue in a state court only with permission of the bankrupt court to collect legal, as distinguished from equitable claims due to the estate under $500. See Proviso to Sec. 4,974 R. S. Note. 22 June 1874, C. 176, V. 18, p. 178.

Where the bankrupt court has first taken jurisdiction by ordering a sale of mortgaged premises discharged of liens, it thereby ousts a state court of jurisdiction to foreclose the mortgage. Re. Devore 16 Rank Register 56; 51 Iowa 414.

His Honor, Circuit Judge Pardee, in dismissing the bill filed in the Bankrupt Court by the plaintiff against the defendants for the purpose of enjoining them from enforcing their so called liens in the State Chancery Court, held that the lands in question had been properly sold by the Bankrupt Court, and that the jurisdiction of the Bankrupt Court was exclusive. He was of the opinion, however, that the proper remedy was by appeal to the Supreme Court of Alabama, and if necessary to the Supreme Court of the United States, and not by injunction, and hence dismissed the bill See Adams vs Crittenden, 17 Fed. Reporter 42.

The cases were thereupon appealed to the Supreme Court of Ala., with the result stated. The cases could not be appealed to the Supreme Court of the United States because the notes sued on in each case was for only $1,770.94.

Since the printing of this brief, the case of Anderson 23rd Fed. Reporter 494 to 502, was found in which the question is ably reviewed and the same conclusion reached as in this brief.

SUPREME COURT OF THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

ADAM G. ADAMS, PLAINTIFF IN ERROR,

vs.

THOMAS J. CRITTENDEN AND ALFRED BOWEN.

I.

It is the settled law of Alabama that the vendor of lands, though making an absolute conveyance, reciting full payment of the consideration, retains a lien for the unpaid purchase money, if he does not take some independent security, which a court of equity will enforce against the vendee and his privies in estate, other than *bona fide* purchasers for value. Simpson v. McAllister, 56 Ala., 228; Craft v. Russell, 67 Ala., 9; Stringfellow v. Ivie, 73 Ala., 209; Wilkinson v. May, 69 Ala., 33; Napier v. Jones, 47 Ala., 90; Foster v. Trustee of Athenæum, 3 Ala., 302; Burns v. Taylor, 23 Ala., 255.

II.

A purchaser is bound to take notice of all that appears upon the face of conveyances which are links in his chain of title; and if the lien be shown by a deed which is a link in his chain of title, he cannot claim protection as a *bona fide* purchaser. Masich v. Shearer, 49 Ala., 226; Burch v. Carter, 44 Ala., 115; Ketchum v. Creagh, 53 Ala., 224; Johnson v. Thweatt, 18 Ala., 741; Rosette v. Wynn, 73 Ala., 146.

III.

The deed from Weaver to Westmoreland & Troosdale is the source of the title to the lands in controversy, asserted by the plaintiff. And that deed recites as part of its consideration the two promissory notes for seventeen hundred and fifty dollars each, made by the purchasers, which were subsequently transferred to Mrs. Weaver and to Crittenden. The recital charged the plaintiff with notice of the lien on the lands for their payment. And independent of that consideration, an assignee in bankruptcy is not, nor is a purchaser from him, a *bona fide* purchaser, entitled to protection against equites to which the estate of the bankrupt is subject. Smith v. Perry, 56 Ala., 266; 2 Story Eq., § 1228; Cook v. Tullis, 18 Wall, 332.

IV.

The lien of the vendor is assignable, and passes as

an incident to the assignee of the debt for the purchase money. Latham v. Staples, 46 Ala., 462; White v. King, 53 Ala., 162; Wolffe v. Nall, 62 Ala., 24; Wilkinson v. May, 69 Ala., 33; Preston v. Ellington, 74 Ala., 133.

V.

The vendor having the lien has not any estate in, or right to the land; he has neither a *jus in re* nor a *jus ad rem.* He has and retains only the right to charge the land with the payment of the purchase money, a right to be established through the decree of a court of equity. Gilman v. Brown, 1 Mason, 221; Bankhead v. Owen, 60 Ala., 457; Stringfellow v. Ivie, 73 Ala., 209.

VI.

The sale and conveyance by Weaver to Westmoreland & Troosdale was made more than four months before the involuntary proceedings in bankruptcy were instituted against the vendor, Weaver; and then he was without estate or interest, legal or equitable, in the lands. There is no pretense that at the time of the sale and conveyance the vendor was insolvent, or that it was made in contemplation of insolvency or bankruptcy; or that the purchasers, if the vendor was insolvent, or acting in contemplation of insolvency, had any knowledge of the fact, or reasonable cause to believe its existence. Nor is there any pretense that the sale and conveyance was not fair, free from fraud as to the creditors of the vendor. Excepting conveyances offensive to the particular provis-

ions of the bankrupt law, and conveyances fraudulent as to creditors, an assignee in bankruptcy succeeds only to the estate, right or interest the bankrupt had at the commencement of the proceedings in bankruptcy. It results, therefore, that Weaver, the bankrupt, had not any estate or interest in the lands which passed to the assignee in bankruptcy. Nor had he any right or interest in the notes for the purchase money he had transferred to Mrs. Weaver and to Crittenden. Mrs. Weaver and Crittenden were strangers to the proceedings in bankruptcy, and were not affected by them. If the assignee had claimed the notes transferred to them, the claim should have been asserted by a suit at law or in equity, and such suit would not have been a matter or proceeding in bankruptcy. Smith v. Mason, 14 Wall, 419; Marshall v. Knox, 16 Wall, 551. If we do not resort to that erroneous theory, which may have been "quite prevalent in many quarters at one time, that the moment a man is declared bankrupt," the court of bankruptcy draws to itself, or can draw to itself, jurisdiction of all his past transactions, whether he has or has not an interest in them to which the assignee can succeed, it is difficult to conceive whence that court would have derived jurisdiction to enforce the lien on the lands for the unpaid purchase money due to Mrs. Weaver and Crittenden. Eyster v. Gaff, 91 U. S., 521.

VII.

The chancery court of the state had penary jurisdic-

tion to enforce the lien—the subject matter of suit; and it had jurisdiction of all the parties in interest, or who could assert any interest: the assignee in bankruptcy, the bankrupt, the trustee of Westmoreland & Troosdale, Wood—to whom the legal estate in the lands had been conveyed, and the present plaintiff in error, claiming the title to the lands now asserted. The court was competent to administer full justice to all parties before it. If it were conceded that the court erred in the exercise of its jurisdiction, and in not remitting the parties to the court of bankruptcy for a determination of the matter in controversy, the error was capable of correction in that very suit; and while the judgment of the court stands unreversed, cannot be shown collaterally to avoid it. "Jurisdiction of the subject matter is power to adjudge concerning the general question involved, and is not dependent upon the state of facts which may appear in a particular case, arising, or which is claimed to have arisen, under that general question." And "there is a more general meaning to the phrase 'subject matter,' in this connection, than power to act upon the general and, so to speak, the abstract question, and to determine and adjudge whether the particular facts presented call for the exercise of the abstract power." Hunt v. Hunt, 72 N.Y., 217-229.

VIII.

The court of chancery having jurisdiction of the subject matter, the enforcement of a lien on real estate for the unpaid purchase money; having jurisdiction of